

**TAMMY L. WAGNER** )  
 Claimant )  
 VS. )  
 )  
**TOTAL PETROLEUM** )  
 Respondent )  
 AND )  
 )  
**HARTFORD ACCIDENT & INDEMNITY** )  
 Insurance Carrier )

Docket No. 189,269

## ISSUES

The sole issue on appeal is the nature and extent of claimant's disability. On February 27, 1996, claimant and respondent entered into an agreed running award which granted claimant benefits for 12 percent permanent partial general impairment for bilateral wrist injuries. Claimant has since been laid off from her employment for respondent and, because of the layoff, seeks work disability.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award entered by the Administrative Law Judge, denying claimant's request for modification, should be affirmed.

Claimant suffered a work-related injury in December 1993. After the injury, claimant returned to work for respondent performing her former duties without accommodation. In February 1996, claimant and respondent settled the claim for that injury by entering into a running award based upon 12 percent permanent partial general disability to the body as a whole. Claimant continued to work for respondent until October 21, 1996, when claimant was laid off because the facility at which she was working was closed down. Claimant thereafter contacted between 25 and 30 employers but was unsuccessful in finding employment.

Claimant seeks review and modification here because of the change in claimant's employment status. As this case was being litigated, the Kansas Court of Appeals issued its decision in Watkins v. Food Barn Stores, Inc., 23 Kan App. 2d 837, 936 P.2d 294 (1997). In that case the Court of Appeals held:

Where an employee returns to work in an unaccommodated job and earns wages comparable to those earned before his or her injury, the presumption of no work disability applies and will not be rebutted absent evidence of a change in the employee's physical condition.

The record in this case contains no evidence that claimant's physical condition worsened after her return to work. On the basis of the rule of law stated in the Watkins decision, the Appeals Board concludes that claimant's Application for Review and Modification of the Award must be denied.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated August 22, 1997, entered by Administrative Law Judge John D. Clark, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Robert G. Martin, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director